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HAROLD B. WILLEY, Cler

IN THE

Supreme Court of the United States

No. 649 October Term, 1954

FRANK RICH, alias BEN RICH,

Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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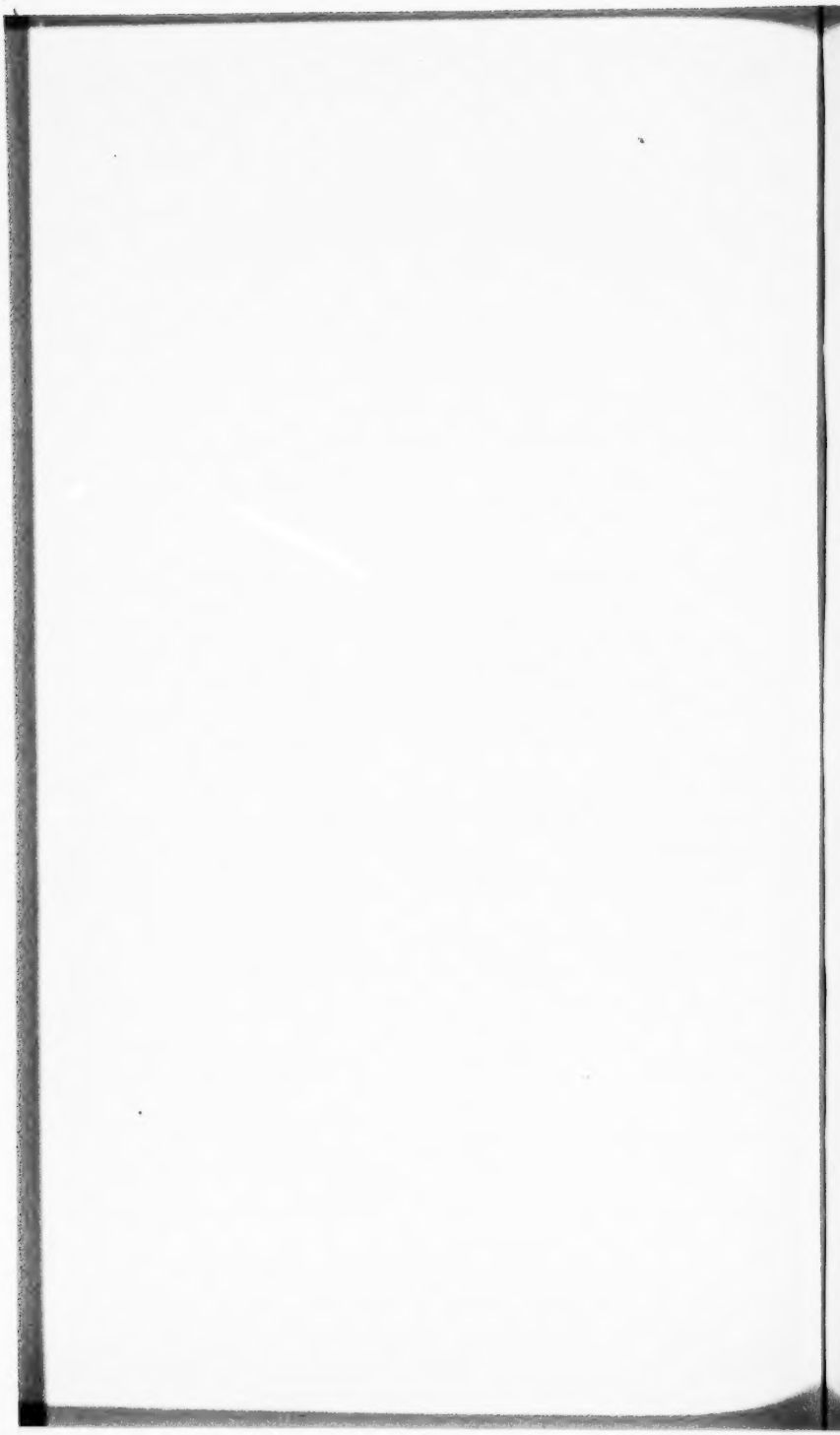

TABLE OF CONTENTS

	Page
Petition for Writ of Certiorari:	
Opinions Below	1
Statement of Matter Involved	3
Jurisdiction	5
Question Presented	6
Commonwealth Constitutional Provisions and Statutes	7
How Question of Due Process was Raised	10
Reasons for Granting Relief	14
Conclusion	26

TABLE OF CITATIONS

Cases:

Adamson v. California, 332 U. S. 46 (1947)	21
Boyd v. United States, 116 U. S. 616 (1886)	21
Commonwealth v. Dugan, 143 Superior 383 (1941)	11
Commonwealth v. Loesel, 155 Super. 461, 38 At. 2d 523 (1944)	22
Commonwealth v. Montanero, 173 Super. 133, 96 At. 2d 178 (1953)	22
Irvine v. People of the State of California (Decided February 8, 1954)	22, 25
Malinski v. New York, 324 U. S. 401 (1945)	23
Rochin v. California, 342 U. S. 165 (1951)	22, 23, 24
Weeks v. United States, 232 U. S. 383 (1914)	21
Wolf v. Colorado, 338 U. S. 25 (1949)	19, 21

CONSTITUTIONAL PROVISIONS:

Amendment XIV, Section 1 of the Constitution of the United States 5, 12, 19

Article 1, Section 8 of the Constitution of Pennsylvania 7, 10, 11, 12, 17

Article 1, Section 9 of the Constitution of Pennsylvania 7, 12

STATUTES:

Act of April 3, 1779, 1 Smith's Laws 470, 12 Purdon's Statutes 1845 ..... 5, 8

Act of June 24, 1939, P. L. 872, §607, (18 Purdon's Statutes 4607) 9

Act of March 31, 1860, P. L. 382, 18 Purdon's Statutes 1445, Sections 60 and 61 ..... 8, 11

MISCELLANEOUS:

Standard Pennsylvania Practice, Volume 3, revised, Section 24, page 31 ff. 17

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COMMONWEALTH OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Your petitioner Frank Rich respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania, entered in the above entitled case on January 8th, 1954.

OPINIONS BELOW

The opinion of the trial court, the Court of Quarter Sessions of Northampton County, Pennsylvania, is unre-

ported, a copy of the opinion is printed on pages 40a to 46a of the record. The opinion of the Superior Court of Pennsylvania is reported in Volume 174 Pa. Super. 174. Your petitioner applied for the allowance of an appeal from the Superior Court of Pennsylvania to the Supreme Court of Pennsylvania. The Supreme Court of Pennsylvania entered the following order on the application: "January 8, 1954. Petition Denied. Per Curiam."

STATEMENT OF MATTER INVOLVED

The District Attorney of Northampton County; the Chief of Police of the City of Bethlehem, and two detectives entered the premises of Frank Rich and conducted a search under authority of an alleged search warrant. Certain articles of personal property were seized, a Morning Telegraph newspaper, seven copies of a paper known as "Armstrong Sheet", a wooden rack, and a number of paper slips bearing pencil notations. After his arrest but prior to indictment and trial the accused filed his petition with the lower Court alleging that the search warrant was unlawfully issued, and that the search and seizure was unreasonable, and in violation of Article 1, Section 8 of the Constitution of the Commonwealth of Pennsylvania. He asked that a rule issue directed to the District Attorney and the police officers to show cause why the articles should not be returned and why the evidence should not be suppressed. The lower Court refused to issue the rule and after legal argument summarily dismissed the petition. After dismissal of his petition, the defendant under the laws of the Commonwealth of Pennsylvania had no legal remedy nor was there any procedure whereby he could obtain immediate repossession of the articles of personal property taken from him in violation of the Constitution of the Commonwealth of Pennsylvania. The property was retained by the District Attorney and the police officers until trial. At the trial the accused moved to quash the indictment, and also objected to the admission

of the articles of personal property in evidence on the ground that the property having been illegally obtained, the accused, by the admission of the evidence was being deprived of due process of law. The objections were overruled, the illegally seized articles were admitted in evidence and the defendant was subsequently convicted of establishing and maintaining a gambling place and with pool selling and bookmaking. The defendant filed a motion in arrest of judgment and a motion for a new trial, both of which were denied and dismissed. On appeal to the Superior Court of Pennsylvania based solely on the illegality of the search and the denial of due process of law to the defendant, the judgment and sentence of the lower court were affirmed. A petition to the Supreme Court of Pennsylvania for the allowance of an appeal from the Superior Court was denied.

JURISDICTION

The jurisdiction of this court is invoked under Amendment XIV, Section 1 of the Constitution of the United States of America.

Your petitioner was entitled to the return of the property unlawfully taken from him, but by reason of the dismissal of his petition was without remedy under the laws of the Commonwealth of Pennsylvania to enforce his right to the immediate return of the property. The Act of April 3, 1779, 1 Smith's Laws 470, 12 Purdon's Statutes, section 1845 declares writs of replevin against officers, acting in their several offices, under the authority of the state to be "irregular, erroneous, and void."

Your petitioner contends that the refusal of the Court to issue the rule requested by your petitioner; the lack of any other remedy under Pennsylvania law enabling petitioner to obtain the immediate return of the property unlawfully seized; and the subsequent use and admission in evidence of the property so seized at the trial of your petitioner deprived him of due process of law in violation of Amendment XIV, Section 1 of the Constitution of the United States of America. All three branches of government, the executive (the police), the legislative (statutory law), and the judicial (the trial Judge) joined together; and in combination nullified a Constitutional mandate by denying Frank Rich due process of law.

QUESTION PRESENTED

When, after an unlawful search and seizure of personal property by police officers, the accused prior to trial and indictment petitions the Court for its return, there being no other remedy available under law to enforce immediate return; did the summary dismissal of the petition and the use of the evidence in a criminal prosecution over the objection of the accused, deprive the accused of due process of law in violation of Amendment XIV, Section 1 of the Constitution of the United States of America?

COMMONWEALTH CONSTITUTIONAL PROVISIONS AND STATUTES

Constitutional Provisions

Article 1. Section 8. Searches and seizures:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

Section 9. Rights of accused in criminal prosecutions:

In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land.

Statutory Provisions

"All writs of replevin granted or issued for any owner or owners of any goods or chattels, levied,

seized or taken in execution, or by distress, or otherwise, by any sheriff, naval officer, lieutenant or sub-lieutenant of the city of Philadelphia, or of any county, constable, collector of public taxes, or other officer, acting in their several offices, under the authority of the state are irregular, erroneous and void; and all such writs may and shall, at any time after the service, be quashed (upon motion) by the court to which they are returnable, the said court being ascertained of the truth of the fact, by affidavit or otherwise."

Act of April 3, 1779, 1 Smith Laws 470, paragraph 2, (12 Purdon's Statutes 1845).

"No writ of replevin shall issue for any device or machine, seized as aforesaid, nor shall any action be instituted for or on account of such seizure, until the court shall have first adjudicated upon the premises * * *"

Act of March 31, 1860, P. L. 382, paragraph 60 (18 Purdon's Statutes 1445).

"Whoever engages in pool-selling, or book-making, or occupies any place with books, apparatus or paraphernalia for the purpose of recording or registering bets or wagers, or of selling pools, or records or registers bets or wagers, or sells pools upon the result of any political nomination, appointment or election, or being the owner or lessee or occupant of any premises, knowingly permits the same to be used or occupied for any of such purposes, or keeps, exhibits or employs therein any device or apparatus for the purpose of recording or registering such bets or wagers, or the selling of such pools, or becomes the

custodian or depository for gain, hire or reward of any money, property or thing of value staked, wagered or pledged, or to be wagered or pledged, upon any such result, or receives, registers, records, forwards, or purports or pretends to forward, to or for any race-course, any money, thing or consideration of value, bet or wager or money, thing or consideration, offered for the purpose of being bet or wagered upon the speed or endurance of any man or beast, or occupies any place with books, papers, apparatus or paraphernalia, for the purpose of receiving or pretending to receive, or for recording or registering or for forwarding, or pretending or attempting to forward in any manner, any money, thing or consideration of value, bet or wagered, or to be bet or wagered, for any other person, or receives or offers to receive any money, thing or consideration of value, bet or to be bet at any race-track, or assists or abets in any manner in any of the acts forbidden by this section, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred ($500), or undergo imprisonment of not more than one (1) year, or both."

1939, June 24, P. L. 872, §607 (18 Purdon's Statutes 4607).

HOW QUESTION OF DUE PROCESS WAS RAISED

The question was originally raised by accused's petition for a rule on the District Attorney and the police officers.

First: Petition for Return of Personal Property:

> "2. That on January 7, 1953, the District Attorney and police officials above mentioned unlawfully seized and took into their possession certain articles of personal property, to wit: two copies of the Morning Telegraph, a newspaper of general circulation in this Commonwealth and in other States; one wooden rack; and a number of paper slips bearing pencil notations. (Record 7a)
>
> • • • • • • • • • •
>
> "6. That the aforesaid search and seizure was an unreasonable search and seizure in violation of Article 1, Section 8, of the Pennsylvania Constitution which provides 'The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.'' (Record 8a, 9a)

Order of Court:

Upon the presentation of the petition in the within matter in open Court, and after hearing argument

of counsel for the petitioner and counsel for the Commonwealth, the prayer of the petition is denied and the petition is dismissed, among others, for the following reasons:

* * * * * * * * *

"Four: That Section 61 of the Act of 1860, P. L. 382, prohibits any preliminary actions for the return of any device or machine seized, etc. That while this section of the Act has been repealed by the Rules of Civil Procedure insofar as it pertains to procedure in replevin, it occurs to the Court that the prohibition against preliminarily seeking the return of contraband prior to trial remains in effect. (Commonwealth v. Dugan, 143 Superior 383)." (Record, 16a, 17a)

Second: Motion to Quash Indictment:

"Mr. O'Brien: * * * The indictments are also in violation of Article 1, Section 8, in that the Commonwealth of Pennsylvania, through its officers and agents, Elias Spengler, the District Attorney; Mr. Hontz, Chief County Detective, and the police officers, seized and took into their possession property belonging to the defendant without due process of law and now attempt to use such property illegally taken, against the defendant.

The Court: The motion is denied." (Record 23a)

Third: Objection to the Admission in Evidence of Property Illegally Seized:

"Mr. Nittle: If the Court please, I offer into evidence Commonwealth's exhibits Nos. 1, 2, 3, 4, and 5.

How Question of Due Process was Raised

Mr. O'Brien: I again object to all of these. One, it is in violation of the defendant's rights under Article 1, Section 8 of the Constitution and in that they were illegally seized. Two, it is in violation of Article 1, Section 9 of the Constitution in that property belonging to the defendant has been illegally taken away from him by these police officers who have refused to return it and are using it against him. I also object to it on the grounds that the use of these records and books are compelling the defendant in effect to testify against himself.

The Court: The objection is overruled." (Record 26a, 27a)

Fourth: Motion for a New Trial:

"2. The Court erred in summarily refusing to issue a Rule as prayed for in the aforementioned Petition.

"3. The Court erred in refusing to enter an Order directing the District Attorney and Police Officers to return the personal property (the subject of the Petition) to the Defendant." (Record 31a)

Fifth: Additional Reasons in Support of Motion in Arrest of Judgment:

"10. The action of the Court in refusing to issue a rule and in dismissing defendant's Petition for the return of the personal property and the suppression of the evidence as prayed for in the Petition, was in violation of the Constitutional rights of the defendant, Article 1, Section VIII and Article 1, Section IX

of the Constitution of the Commonwealth of Pennsylvania." (Record 38a)

Sixth: On Appeal to Superior Court of Pennsylvania:

"2. Did the Court, when it summarily dismissed defendant's petition for a rule to show cause, deprive the defendant of 'due process of law' in violation of Amendment XIV, Section 1 of the Constitution of the United States of America, and thereby commit fundamental error."

REASONS FOR GRANTING RELIEF

A jury found Frank Rich guilty of "bookmaking". Neither the verdict of the jury nor the sentence imposed by the court appear to have warranted the time and effort expended in bringing this matter to the attention of the justices of the highest judicial body in this nation. A review is sought not in an effort to escape just punishment for wrongdoing, but because the manner in which the conviction was obtained should be of the utmost concern to all citizens.

When men of diverse cultures joined together in this land to form a new nation they intended that nation to endure. These men were builders, builders in the literal sense of the word. We can be certain that in building a government they knew that just as in building a home, the foundation must be strong and the materials forming the foundation sound. It was in this manner that they framed the Constitution of the United States of America. When they stated in this Constitution, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized," they meant exactly what they said. A prohibition was placed upon the Federal government, and a right was guaranteed to the people. This however, was not enough; another safeguard was needed, and so

in the Commonwealth of Pennsylvania, as in other states of this nation, further provisions were made. It was provided in the Commonwealth's Constitution: "The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant." These rights together with others set forth in the Constitution, the people considered to be basic rights essential to the dignity of man. They believed this with all the strength of their minds. Deprived of these rights, men would live in fear of the government they created.

One thing more remained to be done in order to insure that these fundamental rights would not be disregarded by the States. An amendment was made to the Federal Constitution directing that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." After doing these things the people could justifiably feel that they were secure in their homes and possessions from oppressive conduct either from officers of the National or State governments. They had built well, but over the years the foundation stones have been weakened by erosive judicial interpretation, until today the stone is beginning to crumble, and may endanger the entire structure. The States are not required to give their citizens absolute protection from every illegal search and seizure. It is sufficient if

they give them a modicum of protection no matter how ineffective. What is important is the form not the substance.

There is an error in the opinions filed in this case which petitioner feels impelled to correct. The lower court in its opinion made the following factual statements:

> "The petition was considered at length, factual representations made by counsel for both sides, and legal argument presented; whereupon, the court dismissed the petition and refused the issuance of a rule." (Record 40a)
>
> "The hearing judge found in the preliminary hearing that this did not constitute an unreasonable search and seizure and, therefore, did not transgress Section 8 of Article 1 of the Constitution." (Record 43a)

The facts stated by the trial judge in his Opinion with reference to a "hearing" were stated in error. The record of the proceedings on Defendant's Petition to suppress evidence and to quash search warrant was printed in full in the Record before the Superior Court on pages 14a to 17a and clearly indicate that the Court was in error when it stated that a "hearing" was held or that there were "factual representations made by counsel for both sides."

The Attorney for the Appellant in his Brief before the Superior Court called the Court's attention to this error in the following manner:

> "The Lower Court inadvertently and mistakenly referred to the legal argument on the petition as a

hearing, stating, 'The hearing judge found in the preliminary hearing that this did not constitute an unreasonable search and seizure and, therefore, did not transgress Section 8, of Article 1 of the Constitution.' There was no hearing on appellant's petition, nor were 'factual representations' made by appellant's attorney contrary to those set forth in the Petition. Appellant was not afforded the opportunity of presenting witnesses in support of his petition. An examination of the record will conclusively demonstrate the fact that the Court below is in error."

The Brief filed on behalf of the Commonwealth does not contravert this statement other than to state on page 2, inter alia, as follows:

> "The Defendant argues that the dismissal of his Petition was a violation of Article 1, Sec. 8 of the Pennsylvania Constitution. What did his Petition aver that should have required other attention than 'summary' dismissal? We will agree that no answer was filed to Defendant's Petition, and that therefore material allegations of matters of fact not denied shall be taken as admitted. But these admissions relate only to matters well pleaded, and do not comprehend conclusions of law or legal conclusions not supported by proper allegations of fact. (See Standard Pennsylvania Practice, Vol. 3, revised, Sec. 24, page 31 ff.)."

Despite the fact that this error was called to the attention of the Superior Court of Pennsylvania, the Opinion of the Superior Court while it fails to specifically state that the Defendant was not denied "due process of law"

inferentially holds that the lower court accorded him due process of law in that:

> "Before he was indicted, Appellant petitioned for the return of his property and for a rule on the Commonwealth to show cause why it should not be returned. The Court fixed a date for a hearing, which was attended by Appellant's counsel and an Assistant District Attorney. Judge Woodring reports that 'the Petition was considered at length, factual representations made by counsel for both sides, and legal argument presented; whereupon, the Court dismissed the Petition and refused the issuance of a rule'." (Record 53a)

The Attorney for the Petitioner respectfully presents that prior to indictment, the Defendant petitioned for a rule to show cause why certain articles seized in Defendant's premises should not be returned and evidence thereof suppressed. The Court set a date for consideration of the Petition and on said date was attended by counsel for Defendant and a representative of the District Attorney's office. However, no hearing was held other than legal arguments with reference to the question whether or not a rule should issue in accordance with the prayer of the Defendant's petition. No witnesses were called either on behalf of the Petitioner or on behalf of the Commonwealth. The Attorney for the Defendant made no factual representations to the Court that in any way were in contravention of the facts set forth in the Petition. A statement under oath setting forth the above facts in greater detail was filed with the Supreme Court of Pennsylvania at the time the petition for the allowance of an appeal was filed (Record 62a, 63a).

Recently, in the case of *Wolf v. Colorado,* 338 U. S. 25 (1949), the Supreme Court held that Amendment XIV, Section 1 of the Constitution of the United States exacts from the States:

> "for the lowliest and the most outcast all that is 'implicit in the concept of ordered liberty' ". This court then went on to state: "Due process of law thus conveys neither formal nor fixed nor narrow requirements. It is the compendious expression for all those rights which the courts must enforce because they are basic to our free society." (page 27)
>
> "The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English speaking peoples.
>
> "Accordingly, we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guarantee of the Fourteenth Amendment. But the ways of enforcing such a basic right raise questions of a different order. How such arbitrary conduct should be checked, what remedies against it should

> be afforded, the means by which the right should be made effective, are all questions that are not to be so dogmatically answered as to preclude the varying solutions which spring from an allowable range of judgment or issues not susceptible of quantitative solution. (page 27)

It is petitioner's contention in the instant case that the statutory law of the Commonwealth of Pennsylvania coupled with the action of the Court in dismissing the petition of the accused for the return of his property, constitutes an affirmative sanction to the police of this Commonwealth to invade the privacy of the homes of its citizens. If the property was illegally seized in contravention of a prohibition in the Constitution of the Commonwealth, then the possession of this property and its retention by the District Attorney and the police officers was unlawful. The accused had the right to the immediate return of the property taken from him. When the Court refused to issue the rule and dismissed accused's petition, it by that act not only sanctioned the illegal action of the District Attorney and the police officers, but the Court in effect and without any competent evidence before it was prejudging your petitioner prior to trial. It was making a finding that the newspapers, the wooden rack and the slips of papers were contraband and that the articles had been used by the accused in connection with the charges lodged against him. After the dismissal of his petition there was under Pennsylvania law no remedy available by which the immediate return of the property illegally seized could be enforced. The Court and the laws of the Commonwealth permitted the District Attorney and the police officials to continue in their unlawful possession

until the time of trial when the articles over the objections of your petitioner were admitted in evidence against him. This action we contend violates "all those rights which the courts must enforce because they are basic to our free society".

An examination of the cases from *Boyd v. United States,* 116 U. S. 616 (1886), through *Weeks v. United States,* 232 U. S. 383 (1914), and up to *Wolf v. Colorado,* 338 U. S. 25 (1949), discloses that the Court in federal cases excluded evidence resulting from an unreasonable search and seizure, not only because of a violation of the Fourth Amendment, but because of the provisions against self-incrimination in the Fifth Amendment. The case of *Adamson v. California,* 332 U. S. 46 (1947), is authority for the proposition that neither the Due Process Clause of the Fourteenth Amendment nor the Privileges and Immunities Clause applied the self-incrimination limitation to the states.

The High Priest Wigmore came into the Temple of Justice, and gathering his black robed acolytes about him, with censers swinging, they chanted a hymn of expediency. Their words mingling with the smoke from the incense, have obscured a portion of the Tablets of the Law standing upon the high altar. Their hymn should be stilled, the fragrant smoke blown aside by the clear air of reason. Let the Tablets of the Law be seen, bright and shining, in all of their pristine beauty and simplicity.

In the instant case your petitioner is not requesting that the Supreme Court apply the self-incrimination limitation to the states, but petitioner does request the Court to hold the admission of the evidence to be a violation of

rights "implicit in the concept of ordered liberty", relating the admission of the evidence back to: first, the unlawful seizure; second, the summary dismissal of the petition for the return of the personal property; and thirdly, the fact that petitioner had no remedy under the laws of the Commonwealth of Pennsylvania to enforce his right to a return of the property. With reference to this aspect of the case, the lower Court in its opinion held "In any event, the order of court dismissing defendant's petition was definitive and appealable. *Commonwealth v. Montanero,* 173 Pa. Super. Ct. 133, 96 At. 2d 178; *Commonwealth v. Loesel,* 155 Pa. Super. Ct. 461, 38 At. 2d 523. If the hearing judge erred in his order of dismissal, defendant's remedy is by appeal and not by motions for new trial and in arrest of judgment following the verdict. The warrant in the present case was improperly issued, was, therefore, illegal and void." (Record 43a) The Superior Court on appeal held however that the defendant had no right of appeal at this stage of the case, stating: "The case is one of first impression in Pennsylvania but the controlling principle is firmly established. Orders refusing a rule or denying the return of seized property are interlocutory, and an appeal from them would be quashed." (174 Pa. Super. Ct. 176, 177)

In *Irvine v. People of the State of California,* decided by the Supreme Court of the United States, on February 8, 1954, Mr. Justice Frankfurter in a dissenting opinion in which Mr. Justice Burton joined stated in referring to the decision in *Rochin v. California,* 342 U. S. 165 (1951):

> "Thus, the basis on which this case should be adjudicated is laid down in Rochin: 'Regard for the re-

quirements of the Due Process Clause "inescapably imposes upon the Court an exercise of judgment upon the whole course of the proceedings resulting in a conviction in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even those charged with the most heinous offenses" ' 342 U. S., at 169, quoting from Malinski v. New York, 324 U. S. 401, at 416-417 (1945)."

Later in his opinion, Mr. Justice Frankfurter goes on to amplify the above statement:

"The underlying reasoning of Rochin rejected the notion that States may secure a conviction by any form of skulduggery so long as it does not involve physical violence. The cases in which coercive or physical infringements of the dignity and privacy of the individual were involved were not deemed sports in our constitutional law but applications of a general principle. They are only instances of the general requirement that States in their prosecutions respect certain decencies of civilized conduct. Due process of law, as a historic and generative principle, precludes defining, and thereby confining, these standards of conduct more precisely than to say that convictions cannot be brought about by methods that offend 'a sense of justice' 342 U. S., at 173."

And toward the end of the opinion Mr. Justice Frankfurter concludes:

"This Court has rejected the notion that because a conviction is established on incontestable proof of guilt it may stand, no matter how the proof was se-

cured. Observance of due process has to do not with questions of guilt or innocence but the mode by which guilt is ascertained. Mere errors of law in the conduct of State trials afford no basis for relief under the Fourteenth Amendment, and a wide swath of discretion must be left to the State Courts in such matters. But when a conviction is secured by methods which offend elementary standards of justice, the victim of such methods may invoke the protection of the Fourteenth Amendment because that Amendment guarantees him a trial fundamentally fair in the sense in which that idea is incorporated in due process. If, as in Rochin, '(o)n the facts of this case the conviction of the petitioner has been obtained by methods that offend the Due Process Clause,' 342 U. S., at 174, it is no answer to say that the offending policemen and prosecutors who utilize outrageous methods should be punished for their misconduct."

In this case, the personal property was seized in violation of a Constitutional provision. The petitioner Rich, was entitled to its return, because the District Attorney and the police officers had no lawful right to retain possession. He was entitled to its immediate return. The statutory law of Pennsylvania prohibited recovery from the police officers in a replevin action. The Equity Courts in Pennsylvania will not interfere in criminal prosecutions. The Court of Quarter Sessions, summarily dismissed the petition for return which was filed promptly after the seizure. Your petitioner respectfully submits that because of the statutory prohibition and the action of the lower Court, the Commonwealth of Pennsylvania not only condoned a violation of its own Constitution, but

actually sanctioned a denial of due process of law to your petitioner. The futile attempts by your petitioner to correct an error in the lower Court's opinion also indicate that petitioner was denied due process of law.

The situation is exactly as described by Mr. Justice Douglas in his dissenting opinion in *Irvine v. California*:

> "In those days courts put their sanction behind the unlawful invasion of privacy by issuing the general warrant that permitted unlimited searches. There is no essential difference between that and the action we take today. Today we throw the weight of the Government on the side of the lawless search by affirming a conviction based on evidence obtained by it. Today we compound the grievance against which Otis complained. Not only is privacy invaded. The lawless invasion is officially approved as the means of sending a man to prison."

Ending his opinion Mr. Justice Douglas warns:

> "If unreasonable searches and seizures that violate the privacy which the Fourth Amendment protects are to be outlawed, this is the time and the occasion to do it. If police officers know that evidence obtained by their unlawful acts cannot be used in the courts, they will clean their own houses and put an end to this kind of action. But as long as courts will receive the evidence, the police will act lawlessly and the rights of the individual will suffer. We should throw our weight on the side of the citizen and against the lawless police. We should be alert to see that no unconstitutional evidence is used to convict any person in America."

CONCLUSION

In conclusion, the Appellant quotes Associate Justice Robert A. Jackson in an address delivered January 30, 1954, before the New York State Bar Association. In this address Justice Jackson stated:

> "The expanding authority of government, its encroachment on the fields once left to individual choice, can be compatible with individual liberty only if our officials are as much bound by law as our private citizens."

Justice Jackson further stated:

> "No individual should be subject to official condemnation, control or intrusion except at times and for reasons declared by law and applied to him by procedures which comport with our concept of due process of law."

The Appellant prays that his Petition for a Writ of Certiorari be granted by your Honorable Court.

Respectfully submitted,

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